



IAC-FH-NL-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/36394/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 July 2015**

**Decision & Reasons Promulgated  
On 23 July 2015**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR ADEDAYO OLATUNJI OSHIYOKU**

Respondent

**(ANONYMITY DIRECTION NOT MADE)**

**Representation:**

For the Appellant: Mr S. Kandola, Home Office Presenting Officer

For the Respondent: In person (unrepresented)

**DECISION AND REASONS**

1. For the sake of continuity I will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.

**Background**

2. The appellant is a citizen of Nigeria whose date of birth is 15 August 1976. He appeals against the respondent's decision to refuse to grant him further leave to remain in the UK on human rights grounds as a result of his family life with his partner and child.
3. First-tier Tribunal Judge J. Bartlett heard the appeal at Richmond Magistrates' Court on 29 January 2015. In a decision promulgated on 12 February 2015 she allowed the appeal. The respondent was granted permission to appeal against the First-tier Tribunal decision. The two main grounds of appeal are as follows:
  - (i) The respondent asserts that the First-tier Tribunal Judge erred in failing to apply the correct standard of proof. The First-tier Tribunal Judge pointed out a number of flaws in the appellant's evidence which went to the core of the matters before the Tribunal. It was argued that in light of the fact that the appellant's evidence was deemed to be wrong, evasive and contradictory it was not open to the First-tier Tribunal Judge to conclude that the appellant currently a parental relationship with his son.
  - (ii) The second ground of appeal makes essentially the same point that the appellant had failed to establish to the required standard that he continued to have a genuine and subsisting relationship with his son. The judge had found his evidence to be evasive and his evidence was uncorroborated by any other evidence of the level of contact he presently had with his son.
4. The matter comes before the Upper Tribunal to decide whether the First-tier Tribunal decision involved the making of an error on a point of law.
5. The appellant was unrepresented. At the hearing I made clear that my role was to assist him to understand any points that were made on behalf of the Secretary of State and to assist him to put forward any information that might be relevant to my decision.

### **Decision and reasons**

6. After having considered the grounds of appeal and the submissions made at the hearing I conclude that the First-tier Tribunal decision did not involve the making of an error on a point of law.
7. The First-tier Tribunal Judge made a number of findings about apparent inconsistencies in the appellant's evidence and in the evidence given by his wife, Mrs Nicola Baker. The First-tier Tribunal Judge noted that the appellant asserted in his witness statement (also headed 'grounds of appeal') that he was living separately from the child's mother due to work commitments [5]. The suggestion was that he was still in a relationship with the child's mother. The First-tier Tribunal Judge observed that when he was cross-examined the appellant said that he was in fact separated from Mrs Baker. They had been separated since 2012.

8. The First-tier Tribunal Judge said that the appellant asserted once again that he was in a subsisting marriage with Mrs Baker but when questioned more closely it became apparent that what he meant was that they were not divorced and were still formally married [6].
9. The First-tier Tribunal Judge noted that the appellant appeared to be an evasive witness and had difficulty in giving precise information about when and how often he saw his son [7]. When questioned more closely the appellant stated that he cared for his son two evenings a week and every weekend. He said that he now lived close to Mrs Baker's house. He moved there in December 2014 but before that he had been living in Kent which was one hour away from Mrs Baker's house.
10. The First-tier Tribunal Judge took into account a contact order dated 11 November 2013. This was a consent order which provided for the appellant to see his son at a contact centre once a week. The order also stated that contact should move outside the centre and take place every Sunday between 10:00am and 4:00pm upon completion of satisfactory police checks in respect of the proposed contact supervisors. The First-tier Tribunal Judge noted that the appellant said that this arrangement ended in January 2014. He did not receive any particular paperwork from social workers in relation to the new contact arrangements. He said that the arrangements ended because the social workers found there was no cause for concern about his contact with his son.
11. The First-tier Tribunal Judge went to consider Mrs Baker's evidence [10]. Her short witness statement also asserted that they continued to be in a subsisting marriage. The First-tier Tribunal Judge noted that Mrs Baker's evidence relating to the appellant's contact with his son differed in a number of respects.
12. The respondent asserts that in light of her findings relating to the reliability of some of the evidence given by the appellant and his wife the First-tier Tribunal Judge failed to give adequate reasons for concluding that the appellant met the requirements of the immigration rules. The First-tier Tribunal Judge found that there was no evidence to show that the couple had divorced. However, she was satisfied that they had not been living together since their relationship broke down in July 2012 [15]. She accepted that Mrs Baker intends to apply for a divorce and also that the appellant and his wife continued to have a relationship of sorts, which was based on mutual co-operation in order to raise their son. Because the relationship had broken down the First-tier Tribunal Judge concluded that the appellant did not meet the requirements of the immigration rules under the partner route. She then went on to consider whether the appellant met the requirements as a parent under paragraph EX.1.
13. The First-tier Tribunal Judge found both the appellant and Mrs Baker to be unreliable witnesses "in some respects" and quite clearly considered that the assertions made in the witness statements to suggest that they were still in a subsisting marriage was "deplorable conduct" [16]. She also

considered the appellant's evidence that he gave about his relationship with his son to be somewhat evasive. However, the First-tier Tribunal Judge went on to say that having considered the evidence in the round she nevertheless was satisfied that the appellant had ongoing access and contact with his son. She was also satisfied that this was regular and substantial in nature so far as it could be when the appellant no longer lives with the child. The First-tier Tribunal Judge also made a clear finding that because of this regular and substantial contact she considered that the appellant was playing an active role in his son's upbringing.

14. The respondent argues that the First-tier Tribunal Judge's findings are inadequate in light of her comments about the credibility of the witnesses. However, I am satisfied that an overall reading of the decision indicates that one issue that the First-tier Tribunal Judge had with the witnesses was that they had initially sought to gloss over the fact that they had separated. On closer questioning at the hearing both witnesses were in the end quite clear that they had separated but continued to be married. They continued to have a relationship to a certain extent insofar as they co-operate to bring up their son.
15. The First-tier Tribunal Judge considered evidence to show that despite the split in July 2012 the appellant continued to have regular contact with his child. The residence and contact order made on 11 November 2013 confirmed that the child would reside with his mother and made provision for the appellant to have contact with his son at certain times of the week and at a contact centre once a week. Crucially the order went on to say that upon completion of police checks contact would eventually move outside the centre and take place every Sunday and then the final part of the order said that it would move on to "such further and other contact as the parties may agree in writing". At the hearing Mr Oshiyoku told me that it is because of this last provision he did not have any further orders made by the court. Once the social workers were satisfied that the contact arrangements did not need to be supervised he and his wife were left to make their own arrangements.
16. I am satisfied that the First-tier Tribunal Judge's findings regarding the appellant's relationship with his son are sustainable and could not be said to be so inadequate that they amount to an error of law. The First-tier Tribunal Judge heard evidence from both witnesses and although she had concerns about some aspects of their evidence, where it seems that they initially tried to gloss over the fact of their separation, the situation appeared to be clarified to some extent during questioning at the hearing. Although there were some discrepancies as to the exact level of contact the First-tier Tribunal Judge did not consider them so serious that they would cause any real doubt as to whether the appellant continued to have contact with his son. The appellant was previously granted Discretionary Leave to Remain on the basis of his family life with his wife and son. Even though the appellant separated from his wife there was evidence to show that formal contact arrangements continued and were eventually left for him and his wife to negotiate. Despite their separation the appellant's wife

attended the hearing to give evidence. In light of the evidence before the First-tier Tribunal Judge there was no good reason to conclude that the appellant no longer had any contact with his son.

17. For the reasons given above it is clear that despite her concerns about some aspects of the evidence the First-tier Tribunal Judge was satisfied that the appellant had regular contact with his son. As such it was also open to the First-tier Tribunal Judge to accept that the appellant continued to have parental responsibility for the child. While the respondent may disagree with the First-tier Tribunal Judge decision I find that the grounds of appeal amount to little more than a disagreement with her findings and do not disclose any error of law that would have made a material difference to the outcome of the appeal.
18. A final point made by Mr Kandola was that the judge failed to give adequate reasons for finding that the appellant now met the "Suitability" requirements of the immigration rules [17]. This argument did not form part of the grounds of appeal. Although Mr Kandola sought to frame it as part of his overall submissions in relation to the other two points it bears no relation and is a completely separate point. Nevertheless I am satisfied that the findings made by the First-tier Tribunal Judge are sustainable and disclose no material error of law. The "Suitability" requirement the respondent relied on in the original decision was the appellant's failure to provide additional information regarding the contact that he had with his son. It is true that the First-tier Tribunal Judge did not set out in exact terms the reason why she was satisfied that the appellant now met the requirements of Appendix FM-S-LTR. However, it is self-evident that after having given evidence at the hearing and submitting further evidence in the form of the contact order that the appellant had provided the further evidence relating to his family life at the date of the hearing. The reason for the First-tier Tribunal Judge's finding was apparent from the face of the evidence without any need for her to set it out in more detail. As an aside, paragraph 322(9) did not apply to this case by operation of paragraph A320 of the immigration rules.
19. I conclude that the decision of the First-tier Tribunal discloses no error of law that would have made any material difference to the outcome of the appeal. The First-tier Tribunal decision shall stand.

## DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law.

The First-tier Tribunal decision shall stand.

Signed



Date 23 July 2015

Upper Tribunal Judge Canavan